

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: KATRINA CANAL BREACHES  
CONSOLIDATED LITIGATION**

\* **CIVIL ACTION**  
\*  
\* **NO. 05-4182**  
\*

**PERTAINS TO: INSURANCE  
Master Consolidated Class Action  
Complaint (Doc. 3413)**

\* **SECTION "K"(2)**  
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**THE PLAINTIFFS' MOTION FOR RECONSIDERATION,  
OR ALTERNATIVELY, TO MODIFY  
THE COURT'S ORDER STRIKING CLASS ALLEGATIONS  
FROM THE MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

NOW COME the Plaintiffs, through the Court's Appointed Liaison Counsel and Insurance Liaison Counsel, together with the Court's Appointed Plaintiffs Steering Committee (collectively referred to as "the Insurance PSLC"), who move this Honorable Court, pursuant to Federal Rules of Civil Procedure 23(c)(1) and 59(e), for reconsideration, or alternatively, to modify its June 16, 2009, *Order and Reasons* (Doc. 19005), granting the Insurance Company Defendants' Motion to Strike the Class Allegations (Doc. 16711) contained in the *Master Consolidated Class Action Complaint* (Doc. 3413), and on suggesting reconsideration and/or modification of the Court's June 16, 2009, Order is warranted, at least in part, and on further suggesting class treatment of the Plaintiffs' bad-faith or minimal-conduct statutory insurance penalty claims are appropriate for class treatment.

The Plaintiffs further suggest the class allegations contained in the *Master Consolidated Class Action Complaint* (Doc. 3413) are proper, and the Insurance Company Defendants' *Motion* should be denied, at least in part, all as more fully set forth and explained in the accompanying memorandum in support of this motion, because:

(1) the bad faith (or Louisiana minimal-conduct statutory penalties) claims contained in the *Master Complaint* satisfy the predominance requirement for class action treatment;

(2) the United States Supreme Court's recent grant of a petition for writ of certiorari in *Shady Grove Orthopedic Assoc. v. Allstate Insurance Company*, 129 S. Ct. 2160 (May 4, 2009) will provide additional guidance to the Court in rendering its decision on the matters presented by these competing motions, and the *Shady Grove* case's history to date supports granting class treatment on the penalty claims in the matter at hand, thereby warranting a possible deferral of any final ruling on the *Motion to Strike* at this time until the Supreme Court issues its ruling; and, at the very least,

(3) justice compels this Court to modify its prior ruling reinstating the Plaintiffs' class allegations, at least in part, and referring this entire matter to Magistrate Judge Wilkinson for consideration and review as part of the ground-breaking coordinated effort with various state court judges to compromise several of the underlying insurance claims arising from Hurricanes Katrina and Rita, which this Court has been instrumental in advancing with the Honorable Carl J. Barbier, and on further suggesting no party will suffer prejudice by referring this matter to Judge Wilkinson.

WHEREFORE, the Plaintiffs, pursuant to Federal Rules of Civil Procedure 23(c)(1) and 59(e), pray this Honorable Court grant their Motion for Reconsideration, or Alternatively, to Modify its June 16, 2009, *Order and Reasons* (Doc. 19005), granting the Insurance Company Defendants' *Motion to Strike the Class Allegations* (Doc. 16711) contained in the *Master Consolidated Class Action Complaint* (Doc. 3413), all as more fully set forth in the

accompanying supporting memorandum, and that the Court refer the parties to Magistrate Judge Wilkinson for possible resolution of all or at least some of the parties' claims set forth in the *Master Complaint*.

**Respectfully Submitted,**

**APPROVED PLAINTIFFS LIAISON COUNSEL**

/s/ Joseph M. Bruno  
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**INSURANCE PLAINTIFFS' SUB-GROUP LITIGATION  
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For

**INSURANCE PLAINTIFFS' SUB-GROUP LITIGATION  
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Joseph J. McKernan  
Drew A. Ranier  
Calvin C. Fayard, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing upon all counsel of record by placing same in the United States mail, properly addressed and with first-class postage, or by facsimile or other electronic transmission this 30th day of June, 2009.

/s/ Joseph M. Bruno

Joseph M. Bruno